

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-03-2005

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.1637 OF 1998

Managing Director
Cholan Roadways Corporation Ltd.,
Railway Station New Road,
Kumbakonam 612 001. ... Petitioner

Vs.

1. C. Peter Raphel
S/o. Kolandaisamy
2. The Presiding Officer,
Industrial Tribunal,
Madras. ... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of certiorari to call for the records of the 2nd respondent in A.P.No.75/94 dated 5.9.1996 and quash the same.

For Petitioner : Mr. John for
M/s. Ramasubramaniam &
Associates

For Respondent-1 : Mr. D. Hari Paranthaman

J U D G M E N T

Cholan Roadways Corporation Limited has filed the present writ petition challenging the order passed by the Industrial Tribunal rejecting the approval petition filed by the Corporation under Section 33(2) (b) of the Industrial Disputes Act, 1947.

2. The facts giving rise to the present writ petition are as follows :-

Respondent No.1 was working as Conductor under the petitioner Corporation. On 16.3.1994, while he was on duty, the bus was checked and it was found that one of the passengers was without ticket. The first respondent gave a statement that he has forgotten

to issue the ticket. During the checking, when the cash bag was checked, there was excess cash of Rs.10.90p. A departmental proceeding was initiated and charge-sheet dated 20-4-1994 was issued alleging that he had collected fare of Rs.5.40p from the passenger but had failed to issue the ticket and had misappropriated the amount. Second charge was relating to excess of Rs.10.90p. In the departmental proceedings, the first respondent gave a reply dated 21.4.1994 denying the charges. He explained by stating that money had not been collected, but he had been forced to give a statement that he had forgotten to issue the ticket. It was further indicated that excess amount found represented the batta payable to the driver for the duty which had been performed by him on 15.3.1994. The enquiry officer found the Conductor guilty and on the basis of such finding, after issuance of second show cause notice, Respondent No.1 was dismissed from service by order dated 5.7.1994. Since an industrial dispute was pending before the Tribunal, the Corporation sought for Approval of the dismissal in accordance with Section 33 (2)(b) of the Industrial Disputes Act. Such Approval Petition having been rejected by the Tribunal, the present writ petition has been filed.

3. The Tribunal came to the conclusion that the witnesses who were present at the time of incident had not been examined by the Management to prove the charge and the evidence of the Checking Inspector cannot prove the charge and even otherwise, the first respondent has stated that he had forgotten to issue the ticket and the passenger had also stated that he had forgotten to get the ticket from the Conductor. The Tribunal also came to the conclusion that keeping in view the number of passengers traveled, "failure to issue one ticket to one passenger cannot be taken as a serious misconduct". The Tribunal also accepted that excess cash was towards batta of the driver, which he had failed to receive from the Conductor. The Tribunal further observed that the Standing Order of the Corporation marked as Ex.M.12 does not show that keeping of excess amount over and above the collection is a misconduct. After referring to the decision of the Supreme Court reported in 1984 (I) LLJ 16 (GLAXO LABORATORIES LTD., v. LABOUR COURT, MEERUT & OTHERS), the Tribunal further concluded :-

"... From the decision of our Supreme Court, it is clear that keeping excess cash is not a misconduct enumerated in the Standing Orders, the contention of the petitioner that the respondent has committed the said misconduct must be rejected. This charge for keeping excess cash has to be accommodated only in Clause 24(4) which says "Any other acts and omissions that may be reasonably considered by the management as a misconduct." However, when there is no specific clause to show that keeping excess cash is a misconduct, it has to be held that this charge has not been proved."

The Tribunal further concluded that show cause notice has been issued by the General Manager, who was required to pass the dismissal order, but the Managing Director, who was the appellate authority, has passed the dismissal order thus depriving the first respondent an opportunity of filing an appeal. On the basis of the aforesaid conclusion, the Approval Petition was rejected.

4. On a perusal of the order passed by the Tribunal, it is apparent that the Tribunal has exceeded its jurisdiction in re-appreciating the evidence, which had been laid before the disciplinary authority. In a proceeding under Section 33(2)(b) of the Industrial Disputes Act, the Tribunal is only required to find out whether the disciplinary proceeding is conducted in consonance with the principles of natural justice and whether there is a prima facie case for according approval. The scope of Section 33(2)(b) is much more limited when compared to ordinary Industrial Dispute relating to order of termination. Technically speaking, however, there is some justification in the conclusion of the Tribunal that the order of dismissal having been passed by the Managing Director, Respondent No.1 was deprived of filing of appeal as the Managing Director himself is the appellate authority.

5. Learned counsel for the Corporation has submitted that Respondent No.1 could have filed appeal before the Board. However, in the order of dismissal, it was not so indicated. On the basis of this technical defect, the ultimate order of the Tribunal in not according approval can be said to be justified. However, the basic fact that the Conductor/Respondent No.1 failed to issue a ticket and excess amount had been found, cannot be lost sight of. The conclusions of the Tribunal on these aspects cannot be said to be justified. The recent decisions of the Supreme Court is to take a serious note regarding misappropriation.

6. The petitioner has asserted that before filing of writ petition, some efforts had been made for amicable settlement. In course of hearing, learned counsel for Respondent No.1 has suggested that Respondent No.1 has already attained the age of superannuation, and therefore, even though there is no scope for reinstatement, the respondent should not be deprived of the retirement benefits.

7. Having regard to the facts and circumstances of the case, I feel interest of justice would be served by modifying the order of the Tribunal and issuing the following directions :-

(i) Respondent No,.1 shall be deemed to have been reinstated in service.

(ii) Respondent No.1 would not be entitled to any backwages from the date of order of dismissal till the date of retirement, save and except the amounts already received by him pursuant to various interim orders passed by the High Court from time to time.

(iii) However, the entire period shall be calculated towards increment, and retirement benefits should be so calculated and shall be paid to Respondent No.1. This may be done within a period of three months from the date of receipt of this order.

8. With the above directions and subject to modification, the writ petition is disposed of. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer,
Industrial Tribunal,
Madras.

One cc to Mr.S.Ramasubramaniam, Associates, SR.14820.

One cc to Mr.D.Hariparanthaman, Advocate SR.14417.

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